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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/982,830	10/22/2001	Hiroshi Komatsu	8733.036.11	8484

30827 7590 09/04/2003

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EXAMINER

TON, MINH TOAN T

ART UNIT PAPER NUMBER

2871

DATE MAILED: 09/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/982,830

Applicant(s)

KOMATSU, HIROSHI

Examiner

Toan Ton

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 28-46 is/are pending in the application.
- 4a) Of the above claim(s) 28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 29-46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☒ Certified copies of the priority documents have been received in Application No. 08/832,980.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

***Election/Restrictions***

1. This application contains claims directed to the following patentably distinct species of the claimed invention:

(I) the specifics of the device being comprised of a distance between the pair of electrodes being greater than the thickness of the liquid crystal layer (claim 28);

(II) the specifics of the device being comprised of the data and common electrodes being formed at angle with respect to the longitudinal direction of the gate lines (claims 29-46).

2. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, there is no generic claim.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

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Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

3. During a telephone conversation with Ms. Rebecca Rudich on 07-28-03 a provisional election was made without traverse to prosecute the invention of species II, claims 29-46. Affirmation of this election must be made by applicant in replying to this Office action. Claim 28 is withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 29-37, 44-46 are rejected under 35 U.S.C. 102(e) as being anticipated by Asada et al (US 5745207).

Asada discloses an in-plane-switching active matrix liquid crystal display device having a plurality of pixels including at least first and second regions comprising: first and second substrates (see Figure 1); gate and data lines on the first substrate in each first and second region (see Figure 2, 3 or 4); a common line 2a on the first substrate in each first and second region; data/pixel electrode 4 and common electrode 2 on the first substrate, wherein the data and common electrodes being inclined at an angle with respect to the longitudinal direction of the gate lines (see Figure 2, 3 or 4); a liquid layer between the first and second substrates.

Per claims 30-36 and 44-46, see Figure 2, 3 or 4.

Per claim 37, Asada discloses the angle between  $60^{\circ}$ - $90^{\circ}$  (85 is within 60-90)

6. Claims 38-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Asada as applied to claims 29-37, 44-46 above.

Per claims 38-39, different angles such as  $90^{\circ} < \text{angle} < 180^{\circ}$  or about  $95^{\circ}$  appear to be obvious variations (i.e., not patently distinct to angle of about  $85^{\circ}$ ) to one of ordinary skill in the art. Thus, it would have been at least obvious to one of ordinary skill in the art to select different angles such as  $90^{\circ} < \text{angle} < 180^{\circ}$  or about  $95^{\circ}$ , since they appear to be obvious variations (i.e., not patently distinct to angle of about  $85^{\circ}$ ).

Per claim 40:

The use of a light shielding layer is common and known in the art for advantages such as improving the contrast of the display. Therefore, it would have been obvious to one of ordinary skill in the art to employ a light shielding layer, as it is common and known in the art for advantages such as improving the contrast of the display.

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The use of a color filter is common and known in the art for advantages such as providing a color display. Therefore, it would have been obvious to one of ordinary skill in the art to employ a color filter, as it is common and known in the art for advantages such as providing a color display.

Per claims 41-42, materials such as Cr, Cr/CrOx are common and known in the art for advantages such as improving the contrast of the display. Therefore, it would have been obvious to one of ordinary skill in the art to employ materials for a light shielding layer to be such as Cr, Cr/CrOx, as it is common and known in the art for advantages such as improving the contrast of the display. Further, Cr and Cr/CrOx are obvious variations (not patently distinct) to each other.

Per claim 43, the use of a retardation layer on one of the substrates is common and known in the art for advantages such as improving the viewing angle of the display. Therefore, it would have been obvious to one of ordinary skill in the art to employ a retardation on one of the substrates, as is common and known in the art for advantages such as improving the viewing angle of the display.

### ***Double Patenting***

7. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686

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F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. Claims 29-46 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-26 of U.S. Patent No. 5995186. Although the conflicting claims are not identical, they are not patentably distinct from each other because the present and the patent claims recite common and overlapping subject matter such as the data and common electrodes being inclined at an angle with respect to the longitudinal direction of the gate lines, wherein the angle ranges from 0-90 or 90-180.

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***Contact Information***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Toan Ton whose telephone number is (703) 305-3489. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

August 27, 2003

**TOANTON  
PRIMARY EXAMINER**